

Appl. No. 10/092,082
Reply to Office Action of December 3, 2003

Docket No. BAMB-007AUS

REMARKS

The above-identified patent application has been amended and Applicants respectfully request the Examiner to reconsider and again examine the claims as amended.

Claims 13, 14 and 16-37 are pending in the application. Claims 13, 14, and 16-37 are rejected. Claims 25 and 33 are amended herein.

As an initial matter, Applicants also note that the Examiner approves drawing submitted on March 6, 2003. Applicants cannot identify drawings submitted on or near that date, and request clarification as to whether the Examiner is referring to drawings originally submitted on the application filing date, March 6, 2002.

Applicants also note that the attorney docket number listed on the Office action reflects a prior docket number and respectfully request that the docket number be changed to BAMB-007AUS.

The Claim Objections

The Examiner objects to Claim 25, stating "Claim 25[] recites 'flexibly rigid polymer', should be --stiff but flexible polymer--, in order to be consistent with the specification." Claim 25 is amended herein without prejudice in accordance with the Examiner's suggested wording. Claim 33, not mentioned by the Examiner regarding the above wording, is also amended in the same regard.

The Examiner also objects to Claim 33, stating "Claim 33, ln. 3, the phrase 'flexing at flexing at'; appears to be a double recitation... ." Claim 33 is amended herein without prejudice in accordance with the Examiner's suggestion.

In view of the above, Applicants submit that the objection to Claims 25 and 33 should be removed.

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The Rejections Under 35 U.S.C. §102(b)

The Examiner rejects Claims 13, 14, 16-20, 22, 24, 25, 28-31, 33, and 34 under 35 U.S.C. §102(b), or in the alternative, under 35 U.S.C. §103(a), as being unpatentable over Russo (US patent number 5,417,044). The rejection under 35 U.S.C. §102(b) is discussed first followed by the rejection under 35 U.S.C. §103(a).

Applicants submit that independent Claims 13 and 28 are patentably distinct over Russo, since the cited reference neither describes nor suggests "...an angle between the plurality of *tines* and the *handle* ranges from about thirty degrees to about sixty degrees..." as set forth in Claims 13 and 28. The claimed angle range of thirty to sixty degrees defines an acute angle between the *tines* and the *handle* to facilitate grading a surface.

With this arrangement, the present invention provides an ability to push "...the rake head forward ...to smooth the surface of the matter, the backwardly directed tines...ride on top of the material... Then the user draws the rake head back so that the...rearward directed tines engage large particles in the material..." (page 4, paragraph 26)

In contrast, the "horse mucking rake device" of Russo explicitly states that "...each of the tines forms an angle with an imaginary axis extending from the handle of about 30° to about 60°." (abstract, emphasis added) The angle described by Russo is not in relation to the rake handle as claimed in the present invention, but rather in relation to a *projected imaginary axis*. The tines of Russo form an obtuse angle with respect to the handle, not at an acute angle as claimed in the present invention.

Furthermore, Applicants submit that the rake of Russo would be completely unsuitable for grading a surface. If the rake of Russo were to be pushed forward on a surface, it would dig into the surface due to the obtuse handle/tine angle, thereby roughening the surface instead of smoothing the surface. When pulled backward on a surface, the rake of Russo would not pick up larger particles, such as rocks as is desirable when grading soil, for example.

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In addition, Applicants submit that Claims 13 and 28 are patentably distinct over Russo, since the cited reference neither describes nor suggests "... the plurality of tines include a truncated end surface forming an angle with the handle ranging from about plus ten degrees to negative ten degrees."

In view of the above, Applicants submit that Claims 13 and 28 are patentably distinct over Russo.

Claims 14, 16-20, 22, 24, and 25 depend from and thus include the limitations of Claim 13, and Claims 29-31, 33, and 34 depend from and thus include the limitations of Claim 28. Thus, Applicants submit that Claims 14, 16-20, 22, 24, 25, 29-31, 33, and 34 are patentably distinct over the cited references generally for the reasons discussed above in conjunction with Claims 13 and 28.

Applicants submit that Claims 16 and 29 are further patentably distinct over Russo, since the cited reference neither describes nor suggests "...the truncated end surfaces of the tines are substantially parallel with the handle," as set forth in Claims 16 and 29.

Applicants submit that Claims 17 and 30 are further patentably distinct over Russo, since the cited reference neither describes nor suggests "...the truncated end surfaces of the tines form an angle with an axis of the tines ranging from about thirty to about sixty degrees," as set forth in Claims 17 and 30.

With regard to the claimed truncated end surfaces of the tines of Claims 13, 16, 17, 28, 29 and 30, the Examiner asserts that, because Russo describes ends of tines having a flattened surface, "...it would have been obvious if not inherent...[to] one of ordinary skill in the art, that Russo contemplated flattened surfaces of all angular relationships..." Applicants respectfully disagree.

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While Russo discloses that tine ends may be a round tip, pointed tip, flat tip or flattened surface, Applicants submit that Russo does not disclose or suggest tines include a truncated end surface forming an angle with the handle ranging from about plus ten degrees to negative ten degrees, as claimed. Given the obtuse angle of the handle and tines in Russo's device, truncated end surfaces at an angle with respect to the handle ranging from about plus ten degrees to negative ten degrees would disadvantageously retard penetration of the muck rake tines into solid matter. And as described above, the obtuse angle of the tines and handle of the Russo muck rake is quite different than the claimed acute angle relationship of the tines and handle.

With regard to inherency, Applicants submit that the claimed angle of the truncated end surfaces are clearly not inherent in Russo. According to the Manual of Patent Examining Procedure (MPEP) §2112, the Examiner has the burden of proof to establish inherency. As the Examiner is well aware, the fact that a certain characteristic *may* be present in the prior art is not sufficient to establish inherency.

Applicants respectfully submit that, because the rake tines of Russo need not have truncated surfaces that form "an angle with the handle ranging from about plus ten degrees to negative ten degrees" as recited in Claims 13 and 28, need not have truncated surfaces that are "substantially parallel with the handle" as recited in Claims 16 and 29, and need not have truncated surfaces that "form an angle with an axis of the tines ranging from about thirty to about sixty degrees" as recited in Claims 17 and 30, the Examiner has not met the burden to establish inherency for any of these claims.

In view of the above, Applicants submit that the rejection of Claims 14, 16-20, 22, 24, and 25, 28-31, 33, and 34 under 35 U.S.C. §102(b) should be removed.

The Rejections Under 35 U.S.C. §103(a)

In View of Russo

The Examiner rejects Claims 13, 14, 16-20, 22, 24, 25, 28-31, 33, and 34 under 35 U.S.C. §102(b), or in the alternative, under 35 U.S.C. §103(a), as being unpatentable over Russo. The

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rejection under 35 U.S.C. §103(a) is discussed here and the rejection under 35 U.S.C. §102(b) is discussed above.

The Examiner asserts that Russo "...discloses an angle between the plurality of tines and the handle ranges from about 30-60°." The Examiner recognizes, however, that "...Russo does not disclose a specific angle between the tine ends and the rake handle..." The Examiner asserts that "...Russo does disclose the ends of the tines (6) can be round ripped, pointed topped, flat tipped, or provided with a rounded surface." The Examiner concludes that "[i]t would have been obvious...that one of ordinary skill in the art, the Russo contemplated flattened surfaces of all angular relationships with the handle, since no limit is disclosed." Applicants respectfully disagree.

As an initial matter, and as the Examiner is aware, as found in MPEP §2142, in order to establish a prima facie case of obviousness "...the prior art reference (or prior art references when combined) must teach or suggest all the claim limitations." Applicants respectfully submit that the Examiner has not met this burden in order to establish prima facie obviousness.

For substantially the same reasons discussed above in conjunction with the rejection under 35 U.S.C. §102(b), Applicants submit that independent Claims 13 and 28 are patentably distinct over Russo, since the cited reference neither describes nor suggests "...an angle between the plurality of tines and the handle ranges from about thirty degrees to about sixty degrees..." as set forth in Claims 13 and 28. The claimed angle range of thirty to sixty degrees defines an acute angle between the tines and the handle to facilitate grading a surface in contrast to the obtuse angle of the tines and handle of Russo's muck rake.

Furthermore, contrary to the Examiner's assertion above, Applicants submit that it would not have been obvious for Russo to provide the claimed tines that include a truncated end surface forming an angle with the handle ranging from about plus ten degrees to negative ten degrees as called for in Claims 13 and 28. Such an angle provides certain advantages when grading soil. For example, the rake tines as claimed can allow the claimed rake to slide over the ground when

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pushed forward. However, the claimed arrangement would render Russo's muck rake unsuitable for its intended purpose. When racking horse muck (i.e., manure) Applicants submit that it is desirable for the horse muck rake to penetrate into the horse muck when pushed forward, rather than to slide over it.

In view of the above, Applicants submit that Claims 13 and 28 are patentably distinct over Russo.

Claims 14, 16-20, 22, 24, and 25 depend from and thus include the limitations of Claim 13, and Claims 29-31, 33, and 34 depend from and thus include the limitations of Claim 28. Thus, Applicants submit that Claims 14, 16-20, 22, 24, 25, 29-31, 33, and 34 are patentably distinct over the cited references generally for the reasons discussed above in conjunction with Claims 13 and 28.

Applicants submit that Claims 16 and 29 are further patentably distinct over Russo, since the cited reference neither describes nor suggests "...the truncated end surfaces of the tines are substantially parallel with the handle," as set forth in Claims 16 and 29.

Applicants submit that Claims 17 and 30 are further patentably distinct over Russo, since the cited reference neither describes nor suggests "...the truncated end surfaces of the tines form an angle with an axis of the tines ranging from about thirty to about sixty degrees," as set forth in Claims 17 and 30.

In view of the above, Applicants submit that the rejection of Claims 14, 16-20, 22, 24, and 25, 28-31, 33, and 34 under 35 U.S.C. §103(a) should be removed.

Russo in View of Fuller

The Examiner rejects Claims 21 and 32 under 35 U.S.C. §103(a) as being unpatentable over Russo, as applied to Claims 19 and 28 above, in view of Fuller (US patent number 1,577,065). The Examiner asserts that Russo discloses "essentially all" that is claimed in Claim

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19, but "...does not disclose providing a plurality of fasteners for securing the tines to the rake head." The Examiner relies upon Fuller to supply "...removable fasteners (12)." The Examiner concludes that "[i]t would have been obvious to one of ordinary skill in the art, ...to provide the rake of Russo with a plurality of removable fasteners as taught by Fuller... ."

Applicants submit that Fuller does not overcome any of the deficiencies of Russo described in detail above. Fuller merely discloses a lawn broom that can be cleaned with a reverse sweep. Applicants submit that Fuller, like Russo as described above, fails to teach or suggest at least "...an angle between the plurality of *tines* and the *handle* ranges from about thirty degrees to about sixty degrees..." as claimed.

For substantially the same reasons discussed above in conjunction with Claims 13 and 28, Applicants submit that dependent Claims 21 and 32 are patentably distinct over Russo and/or Fuller.

Russo in View of Judy

The Examiner rejects Claims 23 and 35 under 35 U.S.C. §103(a) as being unpatentable over Russo, as applied to Claims 13 and 22 above, in view of Judy (US patent number 4,270,614). The Examiner asserts that Russo discloses "essentially all" that is claimed in Claim 22. The Examiner recognizes, however, that Russo "...does not disclose the diameter of the tines." The Examiner relies upon Judy to disclose a rake having tines with a diameter of 3/16" to 1/2" diameter. The Examiner concludes that "[i]t would have been obvious to one of ordinary skill in the art...to provide the rake device of Russo, with 1/4"-1/2" tines, as taught by Judy... ."

Applicant submits that Judy fails to remedy any of the shortcomings of Russo set forth above. Judy merely discloses a tractor hitch-mounted combination stone rake and ground conditioning machine. Applicants submit that Judy does not teach or suggest "...an angle between the plurality of *tines* and the *handle* ranges from about thirty degrees to about sixty degrees..." as claimed.

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For substantially the same reasons discussed above in conjunction with Claims 13 and 28, Applicants submit that dependent Claims 23 and 35 are patentably distinct over Russo taken alone or in combination, with Judy.

Russo in View of Guidarelli

The Examiner rejects Claims 26, 36, and 37 under 35 U.S.C. §103(a) as being unpatentable over Russo in view of Guidarelli (US patent number 5,142,855). The Examiner asserts that Russo discloses "essentially all" that is claimed. The Examiner recognizes, however, that Russo "...does not disclose...specific use of Nylon." The Examiner relies upon Guidarelli to disclose a rake having tines made from metal or Nylon. The Examiner concludes that "[i]t would have been obvious to one of ordinary skill in the art...to make the rake device of Russo from Nylon or metal, as taught by Guidarelli...."

Applicant submits that Guidarelli does not overcome any of the failings of Russo described above. Guidarelli merely discloses a rake head having two sets of oppositely-directed tines where the tines and head have a generally S-shaped cross-section configuration so that the rake may be operated in either a pulling or pushing mode. Applicant submits that like Russo, Guidarelli does not disclose or suggest "...an angle between the plurality of *tines* and the *handle* ranges from about thirty degrees to about sixty degrees..."

For substantially the same reasons discussed above, Applicants submit that Claims 26, 36, and 37 are patentably distinct over Russo alone or in combination with Guidarelli.

In view of the above, Applicants submit that Claims 13, 14 and 16-37 and the entire case are in condition for allowance and should be sent to issue and such action is respectfully requested.

The Examiner is respectfully invited to telephone the undersigning attorney if there are any questions regarding this Amendment or this application.

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The Assistant Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 500845.

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Respectfully submitted,

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